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Vol. VII

TRANSCRIPT OF RECORD

(Pages 2965 to 3450)

Supreme Court of the United States

OCTOBER TERM, 1948

No. 228

NYE & NISSEN (A CORPORATION), AND ABRAHAM MONCHARSH, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 17, 1948.

CERTIORARI GRANTED OCTOBER 25, 1948.

No. 11308

United States

Circuit Court of Appeals

For the Ninth Circuit.

NYE & NISSEN, a Corporation, and ABRAHAM MONCHARSH,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Ten Volumes

VOLUME VII

Pages 2965 to 3450

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

Rotary Colorprint, 661 Howard Street, San Francisco

(Testimony of E. Hewitt Magee.)

A. Major Evans and Special Agent Sullivan were on the vessel with me.

Q. Did you know who candled the eggs?

A. I have no record of who candled the eggs. In all these vessels, I did not keep a record of the egg-candling procedure.

Q. I did not ask you if you had records of an egg-candling procedure. I asked if the eggs were candled aboard that vessel.

A. I am unable to say from these records.

Q. Did you handle any merchandise on that vessel?

A. Yes, I [2719] did. I checked the butter and the cheese.

Q. How much did the butter weigh?

A. I didn't weigh the butter. I checked the butter, and I observed there were 60 prints in each box stamped "U. S. Grade AA Federal Department of Agriculture, 5-8-44." The butter was not weighed.

Q. At the time you were down there making the investigation on the waterfront someone had told you somewhere in your investigation that it was claimed that Nye & Nissen were short-weighing butter?

A. At the time we went on these ships I don't think we knew or had knowledge that they were alleged to be cutting butter short in weight.

Q. You had investigated and had records from a man named Pineda before you ever went on a single ship, didn't you?

(Testimony of E. Hewitt Magee.)

A. As far as I can recall we talked to Mr. Pineda after we went on the ships. I don't know, as I said before I don't know what date I saw him, but I think it was after we went on the ships.

Q. You saw him in the year 1943, wasn't it?

A. No, it was not.

Q. But at all events you were down there, you had the post office scale, and you had butter on all these ships, and on no occasion did you weigh the butter.

A. Because we had no knowledge *that* the time the butter was being cut short in weight. We did look at the butter to see whether they had 50 prints in a box or 60, because we had received some [2720] complaint in some cases they were putting 50 prints in a box and charging for 60, but we didn't take the prints out and weigh them individually.

The Court: We will take a recess for a few minutes.

(Recess.)

Mr. Faulkner: Q. What ship have you there, Mr. Magee? A. The Heber Creel.

Q. With the assistance of the notes which you hold in your hand, written on a—Let me see that note, please, Mr. Magee—written on a piece of letter paper at the time you were aboard the ship——

A. It is tablet paper.

Q. What? A. It is tablet paper.

Q. Writing paper. A. From a tablet.

Q. That you wrote on board the ship, with the

(Testimony of E. Hewitt Magee.)

aid of that document you can remember what happened, can you?

A. I can remember what I did on the ship.

Q. Can you remember it without that paper?

A. No, I cannot, not the details.

Q. Tell me how much you can remember without the paper on board the Heber Creel.

A. I remember I weighed cheese.

Q. What kind of cheese?

A. The cheese that came in the order.

Q. Well, what was the name of it?

A. Well, I don't recall specifically. There was some Romano Dolce and I believe some cheddar cheese, and some processed cheese.

Q. What were the weights?

A. I don't remember the weights. [2721] That is why I have these notes.

Q. You weighed some Romano Dolce Cheese?

A. Yes, I did.

Q. How much did it weigh?

A. I weighed all the Romano Dolce Cheese that came in that order. It was contained in one box, one wooden box.

Q. Do you remember weighing it and recording that weight?

A. Yes, I weighed it and recorded the weight.

Q. How much did it weigh?

A. The net weight of 6 reels, the cheeses that were in that box, was 54 pounds and 3 ounces.

Q. Did the box have a mark on it?

A. Yes, it did.

(Testimony of E. Hewitt Magee.)

Q. What were the words that you saw on the case?

A. Well, first there were the words, "Worthmore Egg Company." And also on the box, on the other end of the box was the writing, "Whole Milk Romano Dolce, Factory 1621, Nye & Nissen, San Francisco, 56 pounds."

Q. Are you sure the word "lbs" or "pounds" was designated on that box?

A. I am not sure. It might have been just 56. I have it "56 pounds" here.

Q. How many cases of cheese have you seen in connection with your investigation?

A. Of which cheese?

Q. Any kind of cheese.

A. I saw this one box containing Romano Dolce cheese. I saw two boxes of Cheddar cheese, and I saw five cases of Shefford American cheese, that is the processed cheese.

Q. I didn't want to interrupt you. I mean how many cases of [2722] cheese have you seen in the period of time that you were making this investigation?

A. Well, that would be a guess; I would say 40 to 50, maybe more.

Q. Have you ever gone into a cheese plant and looked at cheese packed and ready for delivery?

A. No, I did not. I have talked to the manager of a cheese plant.

Q. Have you ever gone out to the plant of Nye

(Testimony of E. Hewitt Magee.)

& Nissen and seen the floor of that *plant with* cheese?

A. I have been in Nye & Nissen but I haven't been on the floor and looked at the cheese.

Q. At all events, you have not looked at many boxes of cheese, have you?

A. I looked at boxes of cheese in Petaluma.

Q. I mean in San Francisco.

A. No, but Nye & Nissen in Petaluma.

Q. How many boxes of cheese at one time?

A. Probably four or five hundred.

Q. Did you see the word "Pounds" on a single box.

A. I saw the weight marking on the box.

Q. Did you see the "Pounds" on a single box?

A. I don't think I saw the word "Pounds."

Q. In other words, when you saw weights you say figures which you assumed were weights?

A. Figures I was told were weights of the cheeses.

Q. You assumed they were weights. How many of those figures would you see on some of those cases, one, two, or three? [2723]

A. One, I believe.

Q. Did you ever see any of the cheese, Mr. Magee, that would have the weight put on there three or four times?

A. No, I did not. To correct my other statement, I have seen cheese, I saw cheese on one ship, the name I can't recall, on which each box had

(Testimony of E. Hewitt Magee.)

the weight markings. That is an Army shipment. The Army requires marking that way.

Q. What I am talking about, haven't you, as a common occurence in observing the boxes of cheese, seen a box either have a "28" on it, an "82" on it, or it will have a "23" on it?

A. No, I don't recall; I have never seen that kind on any of these vessels, or at Nye & Nissen at Petaluma.

Q. Were you not familiar, from your experience in the matter of observing cheese, that in the year 1944 the cheese was being packed in re-used boxes?

A. The boxes that we saw the cheese in generally appeared to be the original boxes. Another reason I am not too familiar with the weights on all these vessels, with the one exception none of the boxes ever had weight markings on.

Q. The box that had the Romano Dolce cheese was a very dilapidated looking box?

A. No. I have a note here that it appeared to be an old re-used egg crate, but that was the exception.

Q. On that vessel at the time you observed some 5 pounds of processed American cheese?

A. Yes.

Q. Did you weigh it?

A. Yes, I weighed it. I weighed the [2724] 5 cases that were there.

Q. What did each individual case weigh?

A. I made no record of that. I have the whole business on the notes.

(Testimony of E. Hewitt Magee.)

Q. What weight did you record for it?

A. I show 5 cases ~~weighed 150 pounds.~~ Whether that was the scale or not, I don't know, because, as I said before, that cheese comes in a cellophane wrapped loaf and I couldn't say for sure, because they are wrapped at the factory.

Q. Well, cheese depreciates in weight no matter how it is wrapped, doesn't it, at times?

A. We were not concerned with two or three ounces.

Q. Did you weigh the cheese on board?

A. The processed cheese I can't tell. I show five cases, 150 pounds.

Q. Did you see this cheese delivered on the waterfront? A. On this vessel?

Q. Yes.

A. There was one vessel down there where the items were on the pier and we waited for them to be put on the vessel. I have no record of that. I didn't see it arrive, I am quite sure.

Q. What?

A. I don't have a record of having seen it delivered on the waterfront.

Q. Do you know when it was delivered on the waterfront?

A. Yes, I can tell you that. From the records I have here, it was delivered May 12, the day previous to the time I went aboard. [2725]

Q. You were aboard on the 13th of May?

A. Yes.

(Testimony of E. Hewitt Magee.)

Q. On the 13th of May where was the merchandise?

A. On this vessel it was in the chill box.

Q. Was it taken out by you? A. Yes.

Q. Were eggs taken out?

A. As I say, I have no record of the eggs on there except that there were 50 cases of eggs bearing no label, so I can't say whether we took them out, or not.

Q. Do you recall whether the eggs were candled?

A. No, I don't.

Q. Do you recall who was with you on the 13th of May?

A. Yes. Special Agent Hermon Sullivan and Major Evans.

Q. Do you recall anything in relation to candling eggs aboard that ship by Major Evans?

A. I don't recall that particular vessel, because that is only one of many vessels I have gone on. I would say that in view of the fact that Evans was along that probably eggs were examined, but I don't recall it.

Q. Do you recall going on a vessel called the Mission San Diego? A. Yes.

Q. Do you recall anything about that vessel—withdraw that. In connection with Heber Creel, I understand that there were two cases of Cheddar Loaf.

A. Yes, 2 boxes Cheddar Loaf. I don't recall if that was loaves, or not. They were, I believe,

(Testimony of E. Hewitt Magee.)

Q. Well, were they in wooden boxes?

A. Yes. [2726]

Q. How many reels to a box?

A. I am incorrect. It was Cheddar Loaf cheese.

Q. Did you weigh each loaf?

A. Yes, I did.

Q. What were the weights of each particular loaf?

A. Well, I weighed the loaves by putting the contents of each case on a scale together.

Q. What was the weight?

A. Case No. 1, 26 pounds 1 ounce. Case No. 2, 24 pounds 11 ounces. Total weight 50 pounds 12 ounces.

Q. Was there any weight on the box?

A. No, there was not.

Q. Did you look at both ends of each box?

A. I did.

Q. Did you look on the upper and lower part of each box? A. I did.

Q. What writing was on the box?

A. The boxes were marked, one box was marked "Factory No. 1621, Nye & Nissen, San Francisco." Then, on another part of the box it contained a notation, "8-1-1." And also separate from that was the words, "Whole Milk." The second box was marked the same except that it had the figures "9-29-1" in place of the number 8-1-1. Otherwise the markings were the same.

Q. The case containing the Romano Dolce

(Testimony of E. Hewitt Magee.)

kind as to how many wheels of cheese were inside the box or the case?

A. No. The box was nailed. We opened the case by pulling the nails out. There was no marking on the box to show the number of wheels. [2727]

Q. Was the box full?

A. The box was not full, because it was not a regular cheese box. It was apparently an old egg crate. I don't think it filled the box up.

Q. At all events, on this vessel you did not weigh the individual loaves of cheese, you weighed them all together, is that right, in each case?

A. Yes. We put the five wheels on the scale and weighed it at that time.

Q. You went aboard the Mission San Diego; do you recall that vessel?

A. Yes, I recall being aboard that vessel.

Q. Do you recall when you were aboard?

A. Not the exact date. It was in April or early May, 1944.

Q. Do you recall examining butter, eggs, or cheese on board that vessel?

A. I recall that there were eggs candled in the chill box, I believe, of the vessel, and I observed the cases of eggs, and I weighed the cheese.

Q. You weighed two cases. How much did they weigh?

A. I don't recall the weight without my notes.

Q. Do you recall weighing cheese?

A. I recall weighing cheese, yes.

Q. Do you recall the weights?

(Testimony of E. Hewitt Magee.)

A. No, I don't, not without my notes.

Q. Without your notes. Do you recall what kind of cheese that you weighed?

A. Not exactly. I believe there was Cheddar cheese on there, but I don't recall the exact type.

Q. This, as I understand, is a paper that you prepared on board [2728] the ship?

A. That is correct.

Q. That is your written record of your presence on that vessel, written right down there on the ship, isn't it?

A. Either on the ship or in the car before we left the pier, but most likely on the ship.

Q. With the aid of that document, would you tell me whether you examined any cheese?

A. Yes, I did.

Q. Do you recall the time?

A. May 11, 1944.

Q. Do you recall the weight?

A. I didn't hear that.

Q. Do you recall the weight of the cheese?

A. Oh, the weight. There was one case of Romano Dolce cheese which, when opened, had six flat round wheels, which weighed a total net weight of 57 pounds 13 ounces.

Q. Did you weigh all six wheels at once?

A. Yes, I did.

Q. Did you examine any other cheese there?

A. There was one case of 5 pounds processed American cheese which was not actually weighed. It was examined and observed to be wrapped in

(Testimony of E. Hewitt Magee.)

cellophane, and there was also a Cheddar loaf cheese aboard that ship, one case which I weighed.

Q. You weighed that?

A. Yes, I weighed that. That weighed 24 pounds 7 ounces.

Q. How many loaves were in there?

A. The box was filled so I took all the cheeses out. I believe there were five loaves, that filled the box. I have no record of the exact number of loaves, but I do know the box was filled, and I took [2729] all that cheese out.

Q. You went aboard a ship called the James Oliver? A. Yes, I did.

Q. Do you recall whether there was any butter, eggs, or cheese aboard that vessel?

A. I believe the James Oliver had eggs and some butter. I don't think there was any cheese on there.

Q. Did you examine the eggs?

A. I observed the egg cases. I didn't examine the eggs. That was performed, I think that was Major Evans.

Q. Was that made at the time on the vessel, that document?

A. Yes, it was, with the exception of the front page may have been made after I left the vessel. It has a few notations on it of records I happened to get.

Q. When you were aboard the vessel Mission San Diego, did you weigh the butter?

A. No. On the Mission San Diego the butter

(Testimony of E. Hewitt Magee.)

was not *made*. I believe the cases were opened to see if they had 60 prints in them. [2730]

Q. And you found that they did?

A. Yes, they did.

Q. On the James Oliver did you weigh the butter?

A. No, I did not weigh the butter on the James Oliver.

Q. Did you examine it?

A. I looked at the two cases on the vessel to see if they had 60 prints in them, because the invoice called for 120 pounds, which would be 60 in each case.

Q. Mr. Magee, during this period from the 25th of April, which is the first incident I think you referred to, to the 10th or the 13th of May, did you at any time request the shipping company to return any of the merchandise to the firm of Nye & Nissen after you determined that the weights were not in accordance with the invoices?

A. No, I wouldn't have authority to do such a procedure as that.

Q. What authority would be required, Mr. Magee?

A. Well, I am charged with conducting investigations for the United States Government without disclosing the facts of our investigations except to authorized persons, and I would be unable to inform a ship captain or any individual of my findings when I am working on such an investigation.

(Testimony of E. Hewitt Magee.)

Q. Did it occur to you at any time when you were making that investigation, on the waterfront, that the matter of whether or not the firm of Nye & Nissen had intentionally sent articles short-weighted could be determined right then and there by sending for them and seeing what explanation they gave at that time and place of why a short-weight box was [2731] sent down to that pier?

A. As I said before, I would not be authorized to do such a thing. I am working for the Department of Justice and under the direction of the War Fraud unit, and in this particular matter concerning criminal complaints, so I would have no authority to disclose my investigation to anyone who was outside of our department.

Q. Mr. Magee, you had the complete authority at the time you made that investigation, to do anything you wished to determine whether or not the firm of Nye & Nissen intentionally short-weighted an ounce of butter or a pound of cheese on a single shipment, didn't you?

A. Not the way you express it. I could not reveal to them or to any other unauthorized officials the facts of my investigation. I am not authorized to do that.

Q. Is that your explanation of why no comment was made by any vendee of this merchandise to the firm of Nye & Nissen because you were not authorized to talk to them about it?

Mr. Pratt: I object to that question. It is clearly argumentative.

(Testimony of E. Hewitt Magee.)

Mr. Faulkner: Withdraw the question.

Q. You had the right, under your authority, the moment that you observed anything resembling a short-weight in respect to an invoice of goods to go out and ask the vender why he did it, isn't that right?

A. No, that is not right. I do not have such authority. I am not acting on the basis of an inspector. I am conducting a confidential investigation for the War Fraud Division of the Department of Justice. I cannot tell [2732] Nye & Nissen what I find.

Q. You had already been out to Nye & Nissen before you went to a single ship asking to see records of theirs, had you not?

A. I don't think I had.

Q. Your department?

A. I don't know what records you are referring to.

Q. When did you first talk to Mr. Moncharsh?

A. I talked to Mr. Moncharsh, myself, in July, I believe, of 1944.

Q. When was the first time you talked to the employees at that time, the bookkeeper?

A. Probably in July of 1944.

Q Probably in February or March, 1944, wouldn't it be, Mr. Magee?

A. No, it would not. I did not talk to——

Q. You knew that members of your office had been out there talking to employees of Nye & Nissen before you went to the John Muir, didn't you?

(Testimony of E. Hewitt Magee.)

A. If they were, they were not there to tell Nye & Nissen what we were doing. They were there to obtain information from Nye & Nissen. We conduct investigations not by telling the people exactly what we are doing or what we might know. That is not our function.

Q. That is a change in your department, isn't it?

A. Our function is to report the violations to the FBI in Washington and to the Department of Justice, not to the people we are investigating.

Q. Is that something new in the Department of Justice, that what you have just said?

A. It has always been that way as [2733] far back as I have ever heard.

Q. You did not go back far enough, Mr. Magee.

Mr. Pratt: I object to that.

Mr. Faulkner: Q. The usual method of a Department of Justice agent would be to go into a firm and say, "You are supposed to be selling short-weight butter on the waterfront. Now, what about it?" That is the way your department is conducted from Washington?——

Mr. Pratt: I object to that.

The Court: The objection is sustained. Let it go out, let the jury disregard it for every purpose of this case.

Mr. Faulkner: Q. Is the testimony that you gave just now, is it your testimony in this court that under the rules of your department in an investigation a business firm that you are not per-

(Testimony of E. Hewitt Magee.)

mitted to go in and tell them that they are being investigated?

A. No. I told Mr. Moncharsh—in fact, I asked him about some of these deliveries. There is no secret about it. They knew we were checking the ships, as a matter of fact, after we had done a number of them. That is one reason we stopped, because from that time on their deliveries were satisfactory.

Q. The last trip you made down there was May 13th, wasn't it?

A. Possibly. I don't remember the exact day.

Q. That was the day Mr. Nystrom quit, wasn't it?

A. No, we checked ships after Mr. Nystrom left. [2734]

Q. Tell me a single ship that you checked after Mr. Nystrom quit the firm of Nye & Nissen that had one ounce of butter short, one package of eggs that was not up to the mark, or one case of cheese that did not measure up to the invoice?

A. Well, the Heber Creel. Mr. Nystrom, as I remember, did not inform us about a delivery to that vessel. We obtained that from other sources. The Hawaiian Shipper occurred long after Mr. Nystrom left the firm. I could name other vessels of the same type.

Q. The Hawaiian Shipper was in November, isn't that correct?

A. Yes, so far as I can recall Mr. Nystrom was not near that company at that time.

(Testimony of E. Hewitt Magee.)

Q. Did you observe the merchandise delivered to the Hawaiian Shipper?

A. I observed what happened. I observed what was left of it when it came back.

Q. Yes. In other words, what you saw was the result of putting eggs and butter into a chill box on a ship after it had been in there, isn't that correct?

Mr. Pratt: I object to that.

Mr. Faulkner: Withdraw that question.

Q. You did not observe a single case of eggs, a single quantity of cheese, or a single piece of butter that went aboard the Hawaiian Shipper before it was delivered on that vessel, did you?

A. Not on that particular vessel.

Q. What you observed was the condition, or had a complaint [2735] made of the condition after it had been on the vessel and the vessel had gone to sea, isn't that right?

A. No, the complaint was made at the time the vessel—or the complaint was made concerning the eggs at the time they were first used on that vessel.

Q. After they were on board the ship, is that right?

A. When they first started to use the eggs.

Q. And after they were put in the refrigeration plant?

A. Well, they were loaded on the vessel; but the complaint from the War Shipping Administration was the eggs were bad the day they were received.

(Testimony of E. Hewitt Magee.)

Q. Did you ever make any investigation of the condition of the refrigeration plant on the Liberty ships that sailed in and out of this harbor during the course of your investigation of Nye & Nissen?

A. Just what do you mean as to an investigation of refrigeration?

Q. Yes. How many ships had to have their refrigeration repaired?

A. I know the ships I was concerned with, I always talked with the chief and the assistant chief engineers, and I do not recall one ship where they told me they had any trouble with the refrigeration.

Q. In the period from April 15th until the 15th of May, 1944, do you know how many cases of eggs and foodstuffs came back to the port of San Francisco for reconditioning because of faulty refrigeration aboard the vessels?

A. I have no *specific* [2736] *on* that. I know that some of the food was removed after an eight-month voyage for the sole reason they did not think it would keep another four or five months on the next voyage.

Q. Do you know in your investigation at that time, did you assemble from the War Shipping Administration figures of merchandise that was destroyed because of faulty refrigeration?

A. I have never heard of merchandise destroyed for that reason.

Q. Were you on board any vessel when 100 cases of eggs were destroyed right while you were aboard? A. No, I was not.

(Testimony of E. Hewitt Magee.)

Q. Were you on board the vessel, the Sacajervea?

A. I stated before I thought I might have been with Special Agent Johnson, but I have no record pertaining to that.

Q. Did you talk to the engineer of that vessel?

A. I don't recall having talked with the engineer.

Q. Did you talk about the refrigeration aboard that vessel?

A. I say I do not recall having talked to him.

Mr. Faulkner: Mr. Menges, will you stand up and come over here, please?

Q. Did you ever see that man before (referring to Mr. Menges)? A. Yes, I have.

Q. Did you ever tell him that he had a choice of being a defendant or a witness? A. No, sir.

Q. Did you tell him what happened in the plant of Nye & Nissen and ask him to verify it, and when he would not you said, "Well, [2737] you have a choice, Mr. Menges, of being a defendant or a witness?"

A. I do not give choices. That is not up to me, who is prosecuted and who is not.

Q. Did you say to that man right there, "You make your choice right now whether you are going to be a defendant or a witness"? A. No, sir.

Mr. Faulkner: That is all.

The Court: I will excuse the jurors.

(A recess was taken until two o'clock p.m.)

Afternoon Session, March 13, 1946, 2:00 p.m.

The Court: Call your next witness.

DALLAS A. JOHNSON,

called as a a witness for the Government; sworn.

The Clerk: Will you state your name?

A. Dallas A. Johnson.

Direct Examination

Mr. Houck: Q. Mr. Johnson, you are an agent of the Federal Bureau of Investigation, are you not?

A. Yes, sir.

Q. When did you first join that organization?

A. In November, 1938.

Q. You have been assigned to the investigation of this Nye & Nissen case, is that right?

A. Yes, sir.

Q. In working on this case did you have occasion to go on board a number of ships in the Bay area, here? A. Yes, I did.

Q. Was one of those ships the Gilbert Hitchcock? A. Yes, sir.

Q. Do you recall, and while on board did you make notes of your observations on that occasion?

A. Yes, I did.

Q. Will you look at your notes?

Mr. Faulkner: May I see the notes, please?

Mr. Houck: Yes, indeed.

Mr. Faulkner: May I see Mr. Magee's notes?

Q. When was this written, Mr. Johnson?

A. It was written on the day that I went on board the SS Gilbert Hitchcock. I don't [2738]

(Testimony of Dallas A. Johnson.)

remember the exact date; whatever it has written there in the corner.

Q. Are these the original notes you made on that boat? A. Yes, sir.

Q. Did you use Mr. Magee's tablet to write these notes? A. Did I use what?

Q. Mr. Magee's tablet.

A. No, I don't believe Mr. Magee was with me that day.

Q. Everything on these two pieces of paper was written right on board the vessel?

A. I believe the second page was written after —let me see if—yes, the second page was written after I got into the automobile that I had driven down into the pier.

Mr. Houck: Q. Do you have notes——

Mr. Faulkner: May that paper be marked for identification Defendants' Exhibit next in order?

(The document was marked Defendants' Exhibit BP for Identification.)

Mr. Houck: Q. While that is being done, Mr. Johnson, do you have notes for every ship that you went aboard of in the course of your investigation of this case?

A. No, I do not have notes for every ship that I went aboard during this period. On some of these occasions I went with Mr. Magee or another special agent in the Bureau, and they took the notes rather than myself. [2739]

Q. If you have any notes to which you may

(Testimony of Dallas A. Johnson.)

refer when will they have been made with relation to the time you were on the ship?

A. They will have been made at the time I was on the ship or immediately after in the automobile.

Q. Will they have been made by you?

A. Yes, by me.

Q. They are the correct representation of what you saw on board that ship, is that correct?

A. Yes, that is correct.

Q. When was it that you went on board the Gilbert Hitchcock?

A. I went on the Gilbert Hitchcock in the morning of May 1, 1944.

Q. Where was it?

A. It was a Pier 23 in San Francisco.

Q. Whom did you go with?

A. I was in the company of Major Evans at that time.

Q. What did you do when you went aboard the boat?

A. Well, when we first arrived there we saw some eggs and butter and cheese which had been delivered on the pier and the merchandise was pointed out to us by the checker by the name of Fisher, and I observed that the eggs bore the Nye & Nissen green "Biddy Egg" label, and while we were standing there the eggs, butter and cheese was loaded on board the Gilbert Hitchcock, and we went aboard, and we waited for the merchandise to come down to the refrigerator, where it was placed.

(Testimony of Dallas A. Johnson.)

Q. Did you examine the invoice covering this shipment? A. Yes, I did. [2740]

Q. I show you Government's Exhibit 144 in evidence. Does that appear to be the invoice, or a duplicate of it, that you saw on that occasion?

A. Yes; this appears to be identical with the one that I saw, or, at least, similar to the one I saw at that time.

Q. You said the merchandise was placed in the chill box? A. Yes, it was.

Q. Did you examine the eggs in the chill box that were covered by this invoice?

A. Yes. We counted the eggs as they were placed in the chill box by the stevedores loading the chill box, and we observed them at that time.

Q. How many cases of eggs did you look at?

A. I observed 55 cases of eggs which bore the Nye & Nissen green "Biddy egg" label.

Q. Were there other cases that did not bear that label?

A. There were, to the best of my knowledge there were other eggs that were already in the refrigerator before these particular eggs were loaded in. I have no notation as to any marking on those particular eggs.

Q. At any rate, you looked at the 55 cases with the Nye & Nissen label? A. Yes.

Q. What sort of stamp, if any, was on these eggs, or some of them?

A. I noted out of the eggs, 55 cases that we observed, 41 cases bore the inspection of the U. S.

(Testimony of Dallas A. Johnson.)

Department of Agriculture, dated April 29, 1944, and I obtained a label from [2741] one of those cases. We observed that 14 of the cases which were loaded into the refrigerator bore no inspection stamp on either end of the case.

Q. Let me show you U. S. Exhibit 47 for Identification, which appears to be a green "Biddy egg" label. Can you identify that exhibit?

A. Yes; that is one of the labels I removed from a case of eggs bearing the inspection stamp.

Q. How do you identify it?

A. I identify it by my initials, the date, and the name of the ship.

Q. The handwriting in the center of the exhibit is yours? A. Yes.

Q. I call your attention to the Department of Agriculture stamp appearing thereon. Does that appear to be a stamp similar to the one you stated was on the 41 of these cases? A. Yes, sir.

Mr. Houck: I offer Government's Exhibit 47 for identification in evidence.

The Court: Admitted and marked.

Mr. Faulkner: We will object to that as incompetent, irrelevant, and immaterial, and no foundation laid to bind these defendants.

The Court: Objection overruled.

(The label heretofore marked U. S. Exhibit 47 for Identification was thereupon received in evidence.)

Mr. Faulkner: Exception. [2742]

Mr. Houck: Q. As to these fourteen that did

not bear the Department of Agriculture stamp, Mr. Johnson, did you examine those cases?

A. Yes, I examined those along with Major Evans.

Q. How many did you actually open up and look at?

A. I don't recall exactly how many we opened up and looked at. I recall taking the lid, that either one of the two of us took the lids off about seven or eight of them. I can't recall exactly whether we took the lids off of all 14.

Q. Seven or eight. Would that be of the 14?

A. Yes, sir.

Q. What, if anything, did you find in any of these seven or eight cases?

A. We found some eggs which appeared to be to me smaller than the eggs contained in the cases bearing the U. S. Department of Agriculture inspection stamp.

Q. Did you find any card or anything of the sort in any of the cases?

A. I may have on this particular ship—yes, I did. I found two cards on top of the top layer of eggs inside of these cases.

Q. I show you Government's Exhibit 40 for Identification, and also Government's Exhibit 39 for Identification. Can you tell us, first, what Exhibit 40 is?

A. This is a card that I found underneath the top flat which covers the top layer of eggs in one of the cases which did not bear a U. S. Department of Agriculture inspection stamp.

Q. How do you know that that is one of those that you found [2743] on that occasion?

A. I initialed it and put the date and the name of the ship on it at the time I took it out of the box.

Q. I show you Government's Exhibit 39 for identification.

A. Yes; this is a card I also took out of one of the cases.

Q. These cards were taken out of an unstamped case or the stamped cases?

A. Out of the unstamped cases.

Mr. Houck: I offer Government's Exhibits 39 and 40 for Identification in evidence, your Honor.

Mr. Faulkner: May I see those, Mr. Houck?

Same general objection, your Honor.

The Court: Let them be admitted and marked.

Mr. Faulkner: Exception.

(U.S. Exhibits 39 and 40 for Identifcation were thereupon received in evidence.)

Mr. Houck: Instead of showing them to the jury, your Honor, may I save time by reading the handwriting that appears thereon? On Government's Exhibit 40——

Mr. Faulkner: Well, no. You either show it to them or read what is on the card.

Mr. Houck: I am reading from these cards.

Mr. Faulkner: Yes, but read everything on the card.

Mr. Houck: I submit, your Honor, the Government does not have to read all the irrelevant mate-

(Testimony of Dallas A. Johnson.)

rial on a card. It can choose what it wants to read, and defense counsel can read the rest. [2744]

The Court: Pass them to the jury if there is any question.

Mr. Houck: May I ask you a question, Mr. Johnson, before I pass these to the jury:

Q. Which side of the card was up when you opened the top layer on the top flat?

A. The first card, the side that was up was bearing pencil notation, "Candled Pullets."

Q. That was the side that was facing you?

A. Yes.

Q. When you opened the case?

A. That was the one facing me when I opened it. There was also some printing on there, "Tastily flavored Frankfurters."

Q. You are now referring to Exhibit 40 in evidence? A. Yes.

Q. I now show you Exhibit 39 in evidence. Which side of that was up when you opened the case?

A. On this particular card the side was up which bears the pencil notation, "Pullets."

(The exhibits were handed to the jury.)

Q. Were these eggs or any of them candled in your presence at this time, Mr. Johnson?

A. Yes sir, they were.

Q. By whom? A. By Major Evans.

Q. And where was that done?

A. We carried the eggs around the corner in the passageway to a dry stores room which is below

(Testimony of Dallas A. Johnson.)

decks on the ship, where Major Evans could convert the room into a darkroom and candle the eggs there.

Q. Do you recall how many cases of eggs he candled?

A. No, I cannot recall the exact number, but I believe it was around six or seven.

Q. Did he make notes of the results of his candling that you observed?

A. Yes, he did.

Q. The invoice, Mr. Johnson, called for 160 pounds of Cheddar cheese. Did you examine any Cheddar cheese on this occasion?

A. Yes, I did.

Q. And how was it marked?

A. It was contained, first of all, in two cardboard boxes with three wheels in each box, and on the outside of the box was a notation, "Nye & Nissen, San Francisco," and a number which appeared to be 1016-1. This number was slightly blurred, so I can't be sure of that number. It also contained a printed legend "Cheddar Factory 1621 Whole Milk:". And then inside the boxes I found three wheels in each box. The first box—you didn't ask me how——

Q. Did these markings appear on both of the boxes?

A. To the best of my recollection they did. [2746]

Q. Did you weigh this cheese?

A. Yes, I did.

Q. Did it weigh the 160 pounds billed for?

(Testimony of Dallas A. Johnson.)

A. No, the first box weighed 73 pounds, 10 ounces, net; and the second box weighed 74 pounds, 4 ounces net; that is a total of 147 pound, 14 ounces.

Q. Did you also have occasion to go on board the Cape Charles about this time?

A. Yes, I did.

Q. Do you have notes on your observations on that ship? A. Yes sir.

Q. Will you examine them. When was it you went on board this ship?

A. On April 29, 1944.

Mr. Faulkner: May I have the Cape Charles marked for identification.

(The notes in question were thereupon marked Defendants' Exhibit BQ for Identification.)

Mr. Houck: Q. Could you tell me what time you went on board the Cape Charles, Mr. Johnson?

A. This was in the afternoon of April 29, 1944, I believe it was around one-thirty or two o'clock.

Q. Who was with you?

A. Major Evans and Special Agent Magee.

Q. Where was the ship?

A. The ship was at anchorage, a short distance off Hunter Point in the lower part of the Bay.

Q. What did you do when you went on board?

A. I went on board and I contacted the steward, Mr. Howell, along with Mr. [2747] Magee, and I observed the invoice as to the delivery of products from Nye & Nissen on that date.

Q. I show you Government's Exhibit 98 in evi-

(Testimony of Dallas A. Johnson.)

dence. Does that appear to be the invoice or a duplicate of it?

A. Yes sir, this is the same one I saw at that time.

Q. Did you examine the Cheddar cheese on board this ship? A. Yes, I did.

Q. How was it marked?

A. It was marked on the outside—it was contained, first of all, in three boxes, each box containing two wheels, and the outside of the box bore the notation "Nye & Nissen, San Francisco" and the numeral 12-2. The box also bore the notation, "Whole Milk, Cheddar, Factory 1621".

Q. Did you say there were three boxes?

A. There were three boxes.

Q. Were those markings on each of the three boxes?

A. The name "Nye & Nissen, San Francisco", I recall was on three boxes, as well as "Whole Milk, Factory 1621". However, the numeral 12-2 I cannot be sure of.

Q. Where did you find this cheese?

A. It was pointed out to me by the steward. It was in the dairy box below deck next to the refrigerator.

Q. Did you weigh the cheese?

A. Yes, I did.

Q. Did you find it weighed the 240 pounds billed for in the invoice?

A. No, I found it weighed a net of 149 pounds, [2748] which made it 91 pounds short.

(Testimony of Dallas A. Johnson.)

Q. Did you look at any other merchandise on board this ship at this time? A. Yes, I did.

Q. What was that?

A. I looked at the butter and I also looked at the eggs up on deck which Major Evans was candling.

Q. How were the eggs marked?

A. The eggs bore the Nye & Nissen green "Biddy" egg label, all 36 cases, to the best of my knowledge.

Q. Did you open them up, any of them?

A. I recall opening up one or two cases which did not bear any inspection stamp. However, I have no notes in regard to the number of cases I opened.

Q. But you did open up some. Did you find a cardboard tag in one of those that you opened?

A. Yes, I found a cardboard tag in one of the cases that bore no inspection stamp.

Q. I show you Government's 35 for Identification. Is this the cardboard tag you found on that occasion?

A. Yes, this is the cardboard tag I found at that time.

Q. Again which side was up when you opened the case?

A. The side was up which bears the pencil notation "Peewee".

Q. How do you identify that as the one?

A. I identify this by my initials, the name of the ship and the date which are on the reverse side.

Q. And which are in your handwriting?

(Testimony of Dallas A. Johnson.)

A. Yes sir.

Mr. Houck: The Government offers Exhibit 35 for [2749] Identification in evidence at this time.

Mr. Faulkner: Same objection.

The Court: The objection is overruled. It may be admitted and marked.

(U. S. Exhibit 35 for Identification was thereupon received in evidence.)

Mr. Houck: Q. Did you observe the size of the eggs in the box from which you took this cardboard card? A. Yes, I did.

Q. And what did you observe?

A. I observed that they were smaller in appearance than the eggs which bore the inspection stamp of the U. S. Department of Agriculture.

Q. How many bore that inspection stamp?

A. I believe there were thirty-two which bore that inspection stamp.

Q. And that would leave——

A. That would leave four which did not.

Q. And you opened up some of both, did you?

A. Yes sir.

Q. Were those eggs or any of them candled in your presence on that occasion?

A. Well, I wouldn't say that they were candled in my presence. Major Evans took them into this dark room that he had made up in the electricians'—sort of shelter there on the deck, and he closed the door so I couldn't see what he was doing.

Q. Did you go on board the Henry White in April or May of 1944? A. Yes, I did. [2750]

(Testimony of Dallas A. Johnson.)

Q. And when was that?

A. I have notes I made at the time, if I may refer to them as to the date.

Mr. Faulkner: May they be marked of identification?

(The notes were thereupon marked Defendants Exhibit BR for Identification.)

Mr. Houck: Q. When was it you went on board the Henry White?

A. I went on board the Henry White on May 3, 1944.

Q. Who was with you?

A. I went on with Colonel Hand and Agent Magee.

Q. Where was the ship?

A. The ship was docked at the Howard Terminal in Oakland.

Q. What did you do when you first went on board?

A. In company with Agent Magee, I contacted the steward of the ship, whose name, if I recall correctly, was then Winkle. However, I am not quite sure of that. I did not make a note as to his name. And I observed in his possession a purchase order and an invoice which he had received from Nye & Nissen. This invoice was a customer's yellow—it was called Customer's Invoice at the top, and it is a yellow piece of paper.

Q. Did that invoice cover the shipment of particular products? A. Yes, it did.

Q. What were they?

(Testimony of Dallas A. Johnson.)

A. The shipment covered by this invoice was 50 cases of Medium loose processed AA eggs, 8 bundles of 5's, processed American cheese, and 2 bags of grated cheese, [2753] and 20 boxes of Bardell butter.

Q. Let me show you Government's 53 in evidence. Is this the invoice that you saw?

A. No, this is not the invoice I saw. However, it is identical in quantity with the——

Q. You saw the vendor's delivery ticket, did you? A. Yes, I did.

Q. Where were the eggs when you saw them on board the ship?

A. These eggs were in the chill box on board the ship when I saw them.

Q. Did you examine any of these eggs?

A. Do you mean did I look at some of the eggs?

Q. Did your open up any of the cases?

A. Yes, I opened up eight of these cases and assisted Colonel Hand in weighing the case of eggs.

Q. Let me ask you how the cases were marked?

A. The eight cases that I looked at bore the green Nye & Nissen "Biddy" egg label, and none of the eggs bore any inspection stamp whatsoever. On the first box there was a purple "P" on the top of the box. The second one—the rest of the cases bore no markings of any kind that I have noted on my notes here. The cases which bore the inspection stamp of the U. S. Department of Agri-

(Testimony of Dallas A. Johnson.)

culture bore an inspection stamp dated April 29, 1944.

Q. Did you find any of these candling cards in these boxes that you opened?

A. Yes, I did. I believe I obtained at least two and possibly three cards. [2752]

Q. I will show you Government's Exhibits 36 and 38 which are already in evidence. Is there any of your handwriting on Government's 36?

A. Yes, I have initialed it and put the date and the name of the ship in a corner.

Q. When did you do that?

A. I did that at the time I took the card out of the top of the cases of eggs.

Q. Is any of your handwriting on Government's Exhibit 38?

A. Yes, there is. I took this card out at the time I saw it and initialed it at that time.

Q. You say you weighed these cases. How many did you weigh?

A. I weighed eight cases at that time.

Q. What sort of scale did you have?

A. Well, we had a scale, a platform scale, which I obtained from the Postmaster's office here at the Post office. It was a scale which weighed up to one hundred pounds.

Q. Did you do the weighing on board the ship?

A. Yes sir.

Q. Did you make a note as to the results of your weighing of these cases? A. Yes, I did.

Q. In the first place, did you weigh every case?

(Testimony of Dallas A. Johnson.)

A. Well, in this particular instance the first case we took there was a container there, a pan—I mean two or three pans, so far as I can remember, and we took all of the eggs out of all the fillers and flats in this one case and we weighed the case itself with the flats on top to get the tare of the case, which was 8 pounds and 2 ounces. And then we weighed the flats [2753] and fillers separately and they weighed 3 pounds and 8 ounces, that is, three and a half pounds. And then we weighed each of the cases gross. That is, we did not take the eggs out of the rest of the cases; we subtracted the tare of 11 pounds, 10 ounces which we had obtained from the first case, from each of the succeeding cases.

Q. What did you find the net weights of these cases to be?

A. I found the net weights to be 32 pounds, 8 ounces; 33 pounds, 1 ounce; 34 pounds, 6 ounces; 33 pounds, 14 ounces; 33 pounds, 10 ounces; 33 pounds, 9 ounces; 34 pounds, 12 ounces; and 34 pounds, 10 ounces.

Q. Do you recall what type of cases the eggs were in? Were they wooden or fiber?

A. They were all wood cases, that is, the ones that we weighed.

Q. Did you observe whether or not these eggs were candled at that time?

A. Yes, Colonel Hand conducted the candling.

Q. Did he take notes of the results that he found? A. Yes, he did.

(Testimony of Dallas A. Johnson.)

Q. You say Agent Magee was with you on this occasion?

A. Yes, he was.

Q. Did he weigh the cheese?

A. I have no notations as to whether or not he weighed the cheese at that time. However, I believe I recall that he did weigh the cheese. This shipment was 8 bundles of processed American cheese, that is, cheese which was manufactured by the Shefford Cheese Company, and [2754] which was contained in boxes which weighed 30 pounds. I remember in this instance we weighed the cheese in the boxes and that it was a gross weight.

Q. You were there when Mr. Magee weighed the cheese? A. Yes.

Q. Did you observe how he weighed it?

A. Yes, I did.

Q. Did you tell me he weighed the boxes with the contents? A. Yes, he did.

Q. Did he later take out the contents and weigh them separately?

A. I think we checked one or two of the individual prints, that is, the 5-pound prints, just to ascertain whether or not the prints actually weighed five pounds apiece.

Q. At any rate, you saw him weigh the gross weight of each of these eight containers that the cheese was in? A. Yes, sir.

Q. Did you observe the condition of the chill box on board this ship?

A. I recall being in the chill box and I recall

(Testimony of Dallas A. Johnson.)

that it was cool. However, as to the condition otherwise, I have no recollection at this time.

Q. Was this a new ship? Was this its first voyage, if you know?

A. I cannot recall whether or not this was the first trip of that ship or not.

Q. Did you go aboard the USS Phillipa?

A. Yes sir, I did.

Q. When was that? Do you have notes?

A. Yes, I do.

Q. Can you tell me when that was that you went aboard that ship?

A. That was on May 5th, 1944.

Mr. Houck: Do you want these marked, Mr. Faulkner? [2755]

Mr. Faulkner: Please.

(The notes in question were thereupon marked Defendants' Exhibit BS for Identification.)

Mr. Houck: Q. Who was with you when you went on board this ship?

A. Major Evans was with me at that time.

Q. Where did you find the ships?

A. I found the ship docked at Pier F, Naval Supply Depot in Oakland.

Q. What did you do when you went on board?

A. I contacted the steward, and he directed Major Evans and myself to the chill box containing 65 cases of eggs which bore the Nye & Nissen green "Biddy" label.

Q. All of them did?

(Testimony of Dallas A. Johnson.)

A. Yes sir, they all did.

Q. Did he show you any papers he had in his possession covering this shipment?

A. I recall that he showed us an invoice, a copy of an invoice, at that time.

Q. I will show you Government's Exhibit 84 in evidence. Does that appear to be the invoice that you saw or a duplicate of it?

A. Yes sir, this appears to be a copy of the one I saw.

Q. Where did you find the eggs on board this ship?

A. These eggs were located in a chill box set aside for eggs only. It was off the main passageway, the first deck below the top deck.

Q. Did you remove any of these eggs to another place for [2756] purposes of inspection?

A. Yes, we carried about seven or eight of these cases down the corridor and around the corner to what appeared to be an abandoned refrigerator room. It was quite a large room.

Q. Did any of them bear a Department of Agriculture inspection stamp?

A. Yes, they did. Of the cases we looked at, fifteen bore no inspection stamp of the U. S. Department of Agriculture, and forty-five cases bore a U. S. Department of Agriculture stamp dated April 27, 1944. [2756-a]

Q. How many cases bore the stamp?

A. 45.

Q. How many cases did not bear a stamp?

(Testimony of Dallas A. Johnson.)

A. I have 15 here. I have it that 15 bore no inspection stamp; however, I notice that the 45 and 15 do not total 65 cases.

Q. At any rate——

A. At any rate, 15 bore no inspection stamp.

Q. Did you open any of these seven or eight cases you took out of the chill box?

A. I beg your pardon?

Q. Did you open any of the seven or eight cases you took out of the chill box?

A. Yes, I did; that is, Major Evans and myself opened the cases. We opened about seven of them, seven or eight of them.

Q. You opened all that you took up?

A. Yes.

Q. Do you know about how many you opened that had the stamp on and how many which did not?

A. Of the ones that we opened I have a notation on the seven that there are three which had no inspection stamp and four which did bear the inspection stamp.

Q. In opening those three which did not bear the inspection stamp did you find a candler's card in one of them?

A. Yes; the third case that I looked at had a card marked "Peewee" in the top.

Q. I show you Government's Exhibit 41 for Identification. Can you tell us whether that is the card you found?

A. Yes, this is the card.

(Testimony of Dallas A. Johnson.)

Q. How do you know?

A. I have initialed it and put the name [2757] of the ship and the date in the lower right-hand corner.

Q. Which side of that card was up when you opened the box?

A. The side bearing the notation in pencil "Pee-wee" was facing up.

Mr. Houck: I offer that in evidence.

Mr. Faulkner: Same general objection, your Honor.

The Court: Admitted and marked.

(U. S. Exhibit 41 for Identification was thereupon received in evidence.)

Mr. Faulkner: Exception.

Mr. Hock: Q. Did you weigh any of those seven cases?

A. Yes, I did; that is, I assisted Major Evans. If I recall correctly I took the eggs out of the cases and he read the scales and called off the numbers to me, and I wrote them down on the note paper, here.

Q. You say you opened both some cases that bore the stamp and some that did not?

A. Yes.

Q. How did you find the size of the eggs compared as to those which were stamped and those which were not stamped?

A. I found that the size of the eggs which were in cases bearing no inspection stamp were smaller

(Testimony of Dallas A. Johnson.)

than the eggs in the cases which did bear an inspection stamp.

Q. Did you note the results of the weighing of those three cases which did not bear the stamp?

A. Yes.

Q. What was the net weight on those as to each case? [2758]

A. The first one was 34 pounds 2 ounces; the third one was 34 pounds 12 ounces; the seventh case I opened weighed 33 pounds 12 ounces. Those were the three which bore no inspection stamp. The cases which bore the stamp weighed 40 pounds 12 ounces, 40 pounds 6 ounces, 40 pounds, and 40 pounds 2 ounces.

Q. Did you go aboard the Czechoslovakia Victory? A. Yes.

Q. Did you take notes on what you observed on that occasion? A. Yes.

Mr. Houck: Do you want these marked, Mr. Faulkner?

Mr. Faulkner: Please.

(The notes were marked Defendants' Exhibit BT for Identification.)

Mr. Houck: Q. When did you go on board the Czechoslovakia Victory?

A. I went aboard this vessel on May 5, 1944.

Q. Who was with you?

A. Major Evans was with me.

Q. Where did you find the ship?

A. The ship was docked at Berth 2 at the Encinal Terminal in Alameda, California.

(Testimony of Dallas A. Johnson.)

Q. What did you do when you went on board?

A. I contacted the steward and he pointed out to me the eggs which had been brought aboard the day, I think it was two days previous—yes, two days previously. They bore the Nye & Nissen green "Biddy Egg" label.

Q. How many cases did he point out to you?

A. He pointed out—he indicated to me that there were 25 cases there with two deliveries. [2759]

Q. Did you inspect those 25 cases?

A. Yes, sir.

Q. Did they bear any inspection stamp?

A. No; not one of the cases bore any U. S. Department of Agriculture Inspection stamp. They did, however, bear a stamp which read, "Medium Grade A."

Q. Did they bear a label?

A. They bore a green "Biddy Egg" label, yes.

Q. I show you Government's 51 in evidence, which is a green Biddy Egg label. Can you tell us if you have seen that before?

A. Yes. This is one of the labels that I removed from one of the cases.

Q. How do you know?

A. I have initialed it and the name of the ship and the date on the reverse side.

Q. Directing your attention to the purple stamp, "Medium Grade A," appearing on this exhibit, is that similar to the one you saw on all these labels?

A. Yes, sir.

Q. For these 25 cases of eggs, is that correct?

(Testimony of Dallas A. Johnson.)

A. Yes.

Q. Where did you find these eggs?

A. These eggs were stacked in the chill box. It was quite a large chill box, and there were other cases of eggs in there. All of the cases bore the green "Biddy Egg" label of the Nye & Nissen Company. There were two lots of eggs which appeared in this refrigerator; 50 to 60 cases bore a Nye & Nissen "Biddy Egg" label. They bore the U. S. Department of Agriculture stamp dated March 27, 1944, which appeared to be from a previous order, and [2760] the 25 cases were placed in a position under the cases of eggs bearing the Department of Agriculture stamp March 27, 1944.

Q. Those were the cases which were not stamped, is that correct? At least, they bore no Department of Agriculture stamp? A. Yes.

Q. Did you examine any of these 25 cases?

A. Yes, at Major Evans' direction. I removed three of these cases to a small entrance hall right outside of the refrigerator.

Q. Did you observe whether or not these three cases were candled?

A. Yes, Major Evans candled them there.

Q. Did you take notes on the results of the candling? A. Yes.

Q. Did you weigh any of these eggs?

A. Yes. I assisted Major Evans in weighing all three cases.

Q. Do you have any notes as to the results of this weighing?

(Testimony of Dallas A. Johnson.)

A. Yes. We weighed the half case of eggs, that is, taking the eggs out of a half a case, weighing the half case with flats and fillers.

Q. Did you have the net weight for these three cases?

A. Yes. After subtracting three pounds eight ounces for tare of the flats and fillers we arrived at a figure of 38 pounds 12 ounces for the first one, 38 pounds 12 ounces for the second, and 39 pounds 4 ounces for the third.

Q. Did you go aboard the Edmund G. Ross at any time? A. Yes.

Q. Do you have notes on what you observed?

A. Yes. [2761]

Mr. Houck: Do you wish this marked, Mr. Faulkner?

Mr. Faulkner: Yes, if you will, please.

(The documents were marked Defendants' Exhibit BU for Identification.)

Mr. Houck: Q. Where did you go aboard the Edmund G. Ross?

A. I went aboard the ship on May 5, 1944.

Q. Who was with you?

A. Major Evans was with me.

Q. Where did you board the ship?

A. The ship was docked at Pier 29 in San Francisco.

Q. What merchandise did you examine on board the ship?

A. Examined cheese and butter on board this ship.

(Testimony of Dallas A. Johnson.)

Q. Did you see this merchandise, before you went on board?

A. Yes. I saw the merchandise as it was on the dock. I believe if I remember correctly this is the ship where I arrived before the Nye & Nissen truck had left the dock, and I observed the unloading, and I observed it there at that time.

Q. And did you find any accompanying papers, or did you observe any accompanying papers on this merchandise that was unloaded?

A. Yes. I observed a yellow shipper's ticket of Nye & Nissen No. 16761; also I observed a copy of the typewritten invoice which was left by the truck driver, signed with the name "Trini Robles, Bookkeeper."

Q. I show you Government's Exhibit 161 in evidence. Does that appear to be the invoice you saw on this occasion?

A. This is not identical with the invoice that I saw at that time. [2762] However, it is similar in that the prices and the billings are the same. However, some of the wording in the invoice that I saw at that time is a little different than the wording in that one.

Q. Do the quantities of the merchandise delivered appear to be the same as the ones you saw?

A. The quantities, for instance, dozens of eggs, pounds of butter, and pounds of cheese are the same.

Q. Did you observe this merchandise being loaded on board the ship?

(Testimony of Dallas A. Johnson.)

A. No, sir. We left before the merchandise was loaded on board the ship.

Q. Did you later come back and go on board?

A. No, we didn't.

Q. Did you inspect any of the merchandise on the pier?

A. Yes, we inspected it on the pier.

Q. What did you inspect?

A. I, myself, weighed the cheese and the butter which had been delivered that day.

Q. What cheese is that you weighed, the Cheddar Twins?

A. Yes; I weighted the three cases of Cheddar cheese at that time.

Q. How was the Cheddar cheese marked?

A. The Cheddar cheese was marked with the "Nye & Nissen, San Francisco" stamp on the outside of the case and each wheel was labeled "Cheddar Whole Milk Factory 1621."

Q. Did you weight the cheese?

A. Yes, I did.

Q. Did you find it weighed 165 pounds, as billed for? [2763]

A. No. I found it weighed 148 pounds and 4 ounces.

Q. Did you go on board the William A. Coulter about this time? A. Yes, I did.

Q. Do you have notes on what you observed on board this ship?

A. Yes, I have some notes which I took while I was on board the ship.

(Testimony of Dallas A. Johnson.)

Mr. Faulkner: May I see those, please?

(The documents were marked Defendants' Exhibit BV for Identification.)

Mr. Houck: Q. When did you go on board the William A. Coulter?

A. I went on board this vessel on May 8, 1944.

Q. Who was with you?

A. I was with Colonel Hand and Major Evans at that time.

Q. Where did you find the ship?

A. The ship was located at Pier 44 in San Francisco; that is the American President Lines Pier.

Q. What did you do when you first went on board?

A. I contacted the steward of the ship, I believe—No; I contacted Mr. Donnelly, who is the checker on the pier, and he showed me the invoices which had been delivered with the eggs, butter and cheese that day.

Q. I show you Government's Exhibit 169 in evidence. Was that the invoice you saw, or a copy thereof?

A. Yes, this is the copy of the invoice that I saw at that time. I also saw another invoice which was on a Nye & Nissen yellow [2764] shipper's ticket and numbered 16794.

Q. Where did you find the eggs on board this ship?

A. I found the eggs in the chill box, the first deck down.

Q. Did the cases bear any labels?

(Testimony of Dallas A. Johnson.)

A. Yes, they bore a green label of Nye & Nissen Company.

Q. How many cases did you find in that chill box?

A. There were 40 cases in this chill box at that time.

Q. They all bore this label, is that correct?

A. Yes, they did.

Q. Did you weight any of these 40 cases of eggs?

A. Yes. I assisted Colonel Hand in weighing them. I made no notation as to the weight, however. I called the weight off to him and he recorded them on a piece of paper.

Q. Did any of these cases bear a Department of Agriculture stamp?

A. Yes; 34 of these cases bore a U. S. Department of Agriculture stamp dated May 4, 1944.

Q. How about the balance of 6 cases?

A. There were six other cases which bore no inspection stamp at all.

Q. Did you open up any of these cases?

A. Yes, we opened up, I believe it was all six of the cases that bore no inspection stamp.

Q. Did you find any candler's card in one or more of these cases?

A. I found the tag on the top of the top layer of one of those cases.

Q. I show you Government's 42 for Identification. Can you tell us when you saw that first?

A. I first saw this on top [2765] layers of eggs

(Testimony of Dallas A. Johnson.)

in one of the cases which did not bear any inspection stamp.

Q. On the William Coulter on this occasion?

A. Yes.

Q. How do you know this is that tag?

A. I initialed it and put the name of the ship and the date that we took it from the box.

Q. And all that appears on the tag, is that correct? A. Yes.

Q. Which side of this tag was up when you opened the case of eggs?

A. It was not readily observable when we opened the case of the eggs, the cover of the case. We took the top flat off the top layer of eggs, and it was underneath the top flat, and the side that was up bears the notation in pencil "Peewee."

Mr. Houck: I offer Government's 42 in evidence.

The Court: Admitted and marked.

Mr. Faulkner: The same general objection, your Honor.

The Court: Note the objection.

Mr. Faulkner: Exception.

(The document was received in evidence and marked U. S. Exhibit 42 in evidence.)

Mr. Houck: Q. You said you weighed some of these cases with Colonel Hand; is that correct?

A. Yes, I did.

Q. Just how was that done, again? Who did the weighing?

A. Well, both of us did the weighing. It was not any [2766] special way that we

(Testimony of Dallas A. Johnson.)

Q. Who took the notes as to the results?

A. Colonel Hand made the memorandum and I think I was putting the case on the scale—I believe on one of those cases we took the eggs out of the case and weighed them, that is, weighed the eggs.

Q. On these cases that you did weigh, did you observe the results of the weighing of each case rather than the reading of the scale?

A. Yes. I would call off the number of pounds and the number of ounces to Colonel Hand and he would write down the figures on a piece of paper. I saw him write on a piece of paper.

Q. Did you see the figures he wrote?

A. Yes.

Q. Do you recall whether those figures that he wrote corresponded with the weights as you called them off and as you saw them on the scale?

A. Yes. I recall they did correspond.

Q. I show you Government's Exhibit 69 for Identification, which is——

A. This is the piece of paper that Colonel Hand used to make the notations as I called off the weights to him.

Q. Those are the notations you saw compared with the results of the reading on the scale that you found to be correct, is that right?

A. Yes, that is correct.

Mr. Houck: At this time the Government offers Exhibit 69 for Identification in evidence.

Mr. Faulkner: At the time Colonel Hand identi-

(Testimony of Dallas A. Johnson.)

fied it to be in his handwriting the Court refused to accept it [2767] in evidence.

Mr. Houck: Because Colonel Hand did not, as I recall, observe the reading on the scale. Now, Mr. Johnson did. He saw the notations being made. He knows they are correct.

Mr. Faulkner: He used that memorandum to refresh his memory. It is not an official document. It is not binding on the defendants. I will submit the objection.

Mr. Houck: The Government will submit it.

The Court: Let it be admitted in evidence.

(U. S. Exhibit 69 for Identification was thereupon received in evidence.)

Mr. Faulkner: Exception. I would like the jury to see the document, your Honor.

The Court: Show it to them.

A Juror: What is that "P"?

Mr. Faulkner: The designation of the letter "P" stands for "Peewee."

Mr. Houck: I wonder if I could ask a few questions before the jury sees the exhibit?

Q. I direct your attention, Mr. Johnson, to the fact that a number of these cases that you weighed, 50.5, 51.9 and so forth are shown in that manner. Would that be the gross or the net weight of the case?

Mr. Faulkner: We object to that as calling for an opinion and conclusion of the witness. This is a document [2768] that Colonel Hand made——

The Court: It was made jointly. The evidence

(Testimony of Dallas A. Johnson.)

discloses that the witness on the stand noted that he marked down the data that there is on this document — Is this a fact?

A. I noted the Colonel, Colonel Hand writing down these figures while I was watching him, yes.

The Court: I will allow it. Read the question.

Mr. Houck: I direct your attention to the fact that several of the cases appear to be over 50 pounds. And those the readings you called off to Colonel Hand—was that the net weight or the gross weight for these cases?

A. That was the gross weight that I called off to him, with the exception of one case where we weighed the half case with flats and fillers, and that was a notation 18 pounds 9 ounces.

Q. That is noted on that document?

A. Yes.

Q. I also direct your attention to the fact that there appears to be in the case of each of these cases a decimal point and a ".7" appearing after—for instance, case No. 8, 52.7. What does that ".7" designate?

A. That designates the number of ounces that I called off to him.

Q. So you called off 52 pounds and 7 ounces in that case? A. Yes.

The Court: We will take a recess.

(Recess.) [2769]

Mr. Houck: Q. Showing you Government's 69 in evidence, Mr. Johnson, which is the notation the Jury has just examined, did you compute the tare

(Testimony of Dallas A. Johnson.)

weight for that first case that you have noted on that exhibit?

A. I do not know whether this is the first or second case that I computed the tare weight on.

Q. Which ever it is, what is the weight, the tare weight, which you computed?

A. Well, it appears to be 30—it would be 11 pounds—if I may figure here a little bit.

Q. Go ahead.

A. It would be 11 pounds and 11 ounces for the first—if I figured it on the basis of the first case, that would be the tare on the first case.

Q. On the first case then you have noted here 45 pounds and 5 ounces. You have told us that that was the gross weight. What would be the net weight deducting that tare which you took?

A. The net weight would be 33 pounds and 10 ounces.

Q. Did you go on board the Francis W. Parker?

A. Yes, sir.

Q. And do you have your notes of your observations on that ship?

A. I must have put them on the table there. Yes, I do have notes.

Q. When did you go on board that ship?

A. I went on board the ship on May 5, 1944.

Q. Who were you with?

A. I was with an agent in our office by the name of Robert Ellis and also with Major Evans.

Q. Where did you find this ship?

(Testimony of Dallas A. Johnson.)

A. This ship was on the [2770] north side of Pier 41 in San Francisco.

Q. What did you do when you first went on board?

A. Well, I didn't see the merchandise on board the ship. We first saw it on the pier.

Q. You first saw it on the pier?

A. Yes sir.

Q. What merchandise did you see on the pier? What general type of merchandise?

A. I saw some butter, eggs and cheese.

Q. Did you see the invoice or delivery ticket covering the shipment? A. Yes.

Q. Where did you see that?

A. I obtained from the checker there the Nye & Nissen Shipper's Ticket No. 16901, which indicated that it was to fill purchase order 2906.

Q. Did you see any invoice?

A. I believe I saw an invoice. However, I cannot positively state that I did see an invoice at that time other than this yellow shipper's ticket.

Q. I show you Government's 104 in evidence. This appears to be a blue copy of that ticket. Does that appear to be a copy of the ticket you saw on that occasion?

A. This is similar to the one I saw. However, it is not the one I saw.

Q. How do the quantities and weights——

A. The quantities, the weights and the prices were identical.

Q. What merchandise did you examine of this

(Testimony of Dallas A. Johnson.)

lot? Let me strike that out. Did you examine the eggs? A. Yes; I did.

Q. How did you find them marked?

A. I found that there were [2771] 45 cases of eggs, and of these 45 cases, 7——

Q. In the first place, what type of label did they bear?

A. On all but one of these cases I found a green "Biddy" egg label calling for medium eggs.

Q. And that other one was not labelled?

A. And this one case bore no label whatsoever.

Q. Did it bear any stamp of the vendors?

A. No sir, it bore no stamp of the vendor, either an inspection stamp or any other marking of the vendor—that is, I mean Nye & Nissen. I believe there were some other markings on the cases.

Q. I mean no mark indicating who the vendor was? A. Yes sir.

Q. Of these 45 cases how many, if any, were stamped with a Department of Agriculture stamp?

A. There would be 38 bore the inspection stamp of the U. S. Department of Agriculture.

Q. That would leave seven that did not?

A. Yes sir, that makes seven that did not bear an inspection stamp.

Q. Of the forty-five cases how many did you open and examine?

A. I opened in company with Major Evans eleven cases that we weighed.

Q. How were those eleven split up as far as

(Testimony of Dallas A. Johnson.)

cases which bore the stamp and which did not bear the stamp?

A. We weighed four cases which bore the stamp and seven which did not.

Q. Incidentally, what was the date of the stamp?

A. The date of the stamp was May 4, 1944.

Q. Did it indicate a grade?

A. Yes, it indicated the grade [2772] of U. S. Grade AA.

Q. Of the eleven which you opened did you weigh any?

A. Yes, we weighed all even cases, that is, we weighed the half-cases with flats and fillers.

Q. Did you compute the net weight of these cases?

A. Yes, we computed the net weight by subtracting three and a half pounds for the tare of the flats and fillers.

Q. What were the net weights of the four cases which were not stamped?

A. Those weights were 38 pounds, 14 ounces—the four cases which were stamped, you say?

Q. Yes, all four cases which were stamped?

A. Those were 38 pounds, 14 ounces; 39 pounds, 8 ounces; 39 pounds, 10 ounces; and 39 pounds, 8 ounces.

Q. And those which were not stamped, what did they weigh?

A. They weighed 35 pounds, 6 ounces; 33 pounds, 8 ounces; 33 pounds, 6 ounces; 34 pounds, 8 ounces; 33 pounds, 8 ounces; 32 pounds, 8 ounces, and 34 pounds, 8 ounces.

(Testimony of Dallas A. Johnson.)

Q. Did you observe these eggs being taken on board the ship?

A. Yes sir, I carried part of these eggs on board the ship.

Q. And what was done with them on board the ship, if you know?

A. We took them to the steward's cabin and there Major Evans candled the eggs.

Q. Did you observe whether or not he took notes of the results of his candling?

A. Yes, he did take notes.

Q. Now, of these cases which you opened, did you take any eggs [2773] out of them?

A. Yes sir, I took I believe it was, three or four eggs out of the cases which we had——

Q. What did you do with them?

A. I brought those with me. I still have them.

Mr. Houck: I ask that this carton containing three eggs be marked as Government's next in order for identification.

(The eggs in question were thereupon marked U. S. Exhibit 171 for Identification.)

Mr. Faulkner: May I ask the witness—you haven't asked him about them yet.

Mr. Houck: Q. I show you Government's 71 for Identification in which are three eggs, and on each of those eggs appears certain handwriting. Will you examine each egg and tell us whose handwriting it is?

A. These are all in my own handwriting. They

(Testimony of Dallas A. Johnson.)

bear my initials, the name of the ship, and the date we obtained the eggs.

Q. When did you place those notations on the eggs?

A. I placed these notations on the eggs at that time.

Q. And are these the eggs which you took out of those cases?

A. Yes sir, these are the eggs that I took out of the cases which bore no inspection stamps.

Q. Incidentally, where did this carton come from?

A. I don't know. I never saw that carton before.

Q. At least that was not on this ship on this occasion? A. No sir. [2774]

Mr. Houck: At this time the Government offers the three eggs in evidence, which are Government's 171 for Identification, without the carton, unless Counsel is willing to have it remain in the carton.

Mr. Faulkner: I just wondered how Counsel for the Government would bring in eggs in a Nye & Nissen container so that anyone could see, the minute he produces it, that it shows "Large Grade A Eggs," and bring in eggs that are obviously small eggs, and make that contrast in the presence of the Jury. I assign it as misconduct. They haven't any relation to that carton, and they deliberately pick a Nye & Nissen label marked Large Eggs and bring in these small eggs to make some sort of impression before the Jury, and I assign it as mis-

(Testimony of Dallas A. Johnson.)

conduct to bring a Nye & Nissen box that has no connection with this case at all into this court as the container of these small eggs.

Mr. Pratt: There is no justification for any such remarks. The Government is not bringing this container in for any purpose in this case whatsoever, and the eggs may be taken out of the container. We haven't the slightest idea or intention of having the container in evidence, but only the eggs. We do not want to have anything in this case that is not absolutely proper and above board and, of course, I resent the implication of Counsel's remark that we are deliberately doing something here for the purpose of deceiving.

Mr. Faulkner: Your Honor, everybody in the room saw what [2775] they did. They brought in a Nye & Nissen box that has nothing to do with the case.

The Court: They just offered the eggs.

Mr. Faulkner: Yes, and I assign the bringing in of the box——

The Court: It will disappear with the assistance of the Clerk. He will be responsible for not breaking these eggs around the court.

Mr. Faulkner: I will ask the Court and Jury at this time to remove from their minds any impression of any kind by reason of the contrast of the label on the box that they were brought in and the size of the eggs.

The Court: Let the remarks of Counsel on both sides in relation to those eggs as well as to the container be disregarded as not evidence in the case.

(Testimony of Dallas A. Johnson.)

The eggs are offered and the carton is to be dispensed with. It has no place in the consideration of this Jury in weighing the evidence in this case.

Mr. Pratt: If the Court please, I would like the record to show this, that the only indication of what appears on this carton came from Counsel for the defendants reading what was on it. The carton has not been in the possession of the Jury, nor has it been where the Jury could possibly have seen the writing on it or the printing on it.

Mr. Faulkner: The record shows—and it won't show in [2776] the reporter's transcript—that Mr. Houck had a few label eggs, that he held the carton in his hand in the presence of the jurors, that he walked to Mr. Johnson and he interrogated him about that box, and Mr. Johnson's position with respect to the jury box is less than three feet.

The Court: In any event, let it go out and the Jury will disregard it for any purpose in this case. You may proceed.

Mr. Houck: May the eggs be admitted in evidence?

The Court: The eggs are in evidence. Better be careful with those eggs.

(The eggs, previously marked U. S. Exhibit 171 for Identification, were thereupon received in evidence.)

Mr. Houck: Q. Did you go on board the Cape Breton, Mr. Johnson? A. Yes, sir, I did.

Mr. Faulkner: May I have the Francis Parker memorandum marked?

(Testimony of Dallas A. Johnson.)

Mr. Houck: Q. Do you have a note of your observations on that ship? A. Yes sir.

(The notes in question were thereupon marked Defendants' Exhibit BW for Identification.)

Mr. Houck: Q. When did you go on board the Cape Breton?

A. I did not go on board the Cape Breton?

Q. When did you examine merchandise destined for the Cape Breton?

A. I first examined merchandise for the Cape Breton on May 10, 1944, at Pier 30. That is the Matson corral at Pier [2777] 30 in San Francisco.

Q. Was anyone with you at that time?

A. There was no one with me except the Matson Navigation Company checker, a man by the name of Wolfe.

Q. Did you observe the vendor's truck on this occasion—— A. Yes sir.

Q. Delivering eggs?

A. Yes, I did. I droye up to this pier and observed that there was a Nye & Nissen truck unloading merchandise at the corral.

Q. Did you examine the delivery papers accompanying this delivery?

A. I recall having examined an invoice, a copy of an invoice, that is, I recall having examined all of the invoices which were in duplicate, which were left with the receiving clerk at that time.

Mr. Houck: At this time, your Honor, may I

(Testimony of Dallas A. Johnson.)

show the Jury the three eggs from the Francis Parker which are in evidence?

The Court: If you will be careful with them, yes.

Mr. Faulkner: While the Jury is looking at those, I would like the case which was the subject matter of comment marked Defendants' Exhibit for identification.

The Court: Very well.

(The carton in which U. S. Exhibit 171 were contained was marked Defendants' Exhibit BY for Identification.)

Mr. Houck: At the same time, your Honor, may I show the Jury the delivery ticket which accompanied these eggs to the [2778] Francis W. Parker? It is in evidence as Government's 104, and the Jury has not seen it before.

The Court: Very well.

(U. S. Exhibits 104 and 171 were thereupon passed among the jurors.)

Mr. Houck: Q. Mr. Johnson, you stated you were on Pier 30, I believe it was, when merchandise was being delivered to the Cape Breton, and that you saw the invoice covering this merchandise?

A. Yes sir.

Q. Certain of this merchandise. I show you Government's Exhibit 81 in evidence and ask you whether it appears to be a duplicate or the original of that invoice?

A. This appears to be a copy of the invoice, yes sir.

(Testimony of Dallas A. Lemson.)

Q. The invoice that you saw on that occasion, is that correct? A. Yes sir.

Q. Did you examine any of the eggs covered by this invoice?

A. Yes, I observed the 45 cases of eggs that were delivered under that invoice.

Q. What label did they bear?

A. They bore labels of Nye & Nissen—it was a green "Biddy" egg label.

Q. They all bore a green "Biddy" egg label?

A. Yes.

Q. Were there any markings on any of these labels?

A. Yes, on nine of these labels there appeared a large purple "P", which was stamped on the label itself.

Q. I show you Government's 43 for Identification which is a [2779] green "Biddy" egg label; and ask you if that isn't one of those that you saw on that occasion?

A. Yes sir, this is one of the labels that I removed at that time from one of the cases. This was a fiber case.

Q. And how do you know that that particular label was the one that you removed?

A. I initialed it, put the date and the name of the ship for whom the delivery was destined.

Q. And all that appears on the label in your handwriting, does it? A. Yes sir.

Q. I call your attention to a large purple "P" in the uppet left-hand corner of that label. Is that

(Testimony of Dallas A. Johnson.)

similar to the "P" that you have testified appeared on nine of these labels? A. Yes sir.

Mr. Houck: The Government offers Exhibit 43 for Identification in evidence, your Honor.

The Court: It may be admitted.

Mr. Faulkner: The same objection, your Honor?

The Court: The objection will be overruled. It may be admitted and marked.

Mr. Faulkner: You are offering all these exhibits on Count 1, Mr. Houck?

Mr. Houck: Count 1.

(U. S. Exhibit 43 for Identification was thereupon received in evidence.)

Mr. Houck: Q. Were there any markings on the green labels [2780] for the other cases outside of these nine that bore the "P"?

A. Yes, they bore a United States Department of Agriculture inspection stamp dated May 4, 1949.

Q. I show you Government's 46 for Identification. Can you identify that green "Biddy" egg label?

A. Yes, I can. This label was not removed at this time. This was removed the following day.

Q. Where were the cases of eggs when you removed this label?

A. They were on Pier 15 in San Francisco.

Q. How long was that after you first saw them on Pier 30?

A. That was—I first saw them on the afternoon of the 10th, and I next saw them the morning of the 11th, early on the morning of the 11th.

(Testimony of Dallas A. Johnson.)

Q. And that was on Pier 15? A. Yes sir.

Q. How many cases did you see on Pier 15?

A. Forty-five cases.

Q. Did they all bear this green "Biddy" egg label?

A. They all bore that label with the exception of the one that I had removed the labels from.

Q. On the day before? A. Yes sir.

Q. Outside of the nine which had the "P" on them, does this appear to be identical with the Biddy egg label on the balance of the cases?

A. Yes, yes, this appears to be identical with the label on the balance of the cases.

Q. And is it a label which you removed from one of the cases? [2781] A. Yes, it is.

Q. How do you know that?

A. I have initialed it with the date, put my initials, the date, and the name of the ship that they were supposed to go to.

Q. I direct your attention to a Department of Agriculture stamp appearing on this label dated May 4, 1944. Is that stamp the one which appeared on all of these cases aside from those nine which bore no stamp? A. Yes sir, that is the stamp.

Mr. Houck: The Government offers 46 in evidence, your Honor.

Mr. Faulkner: Same general objection.

The Court: The objection is overruled. Let it be admitted and marked.

(U. S. Exhibit 46 for Identification was thereupon received in evidence.) [2782]

(Testimony of Dallas A. Johnson.)

Q. Who were you with on May 11th when you saw these cases again?

A. I was with Major Evans and myself.

Q. Did you go aboard the ship?

A. No. When we first arrived there the eggs, the butter and cheese was still located on the pier, on Pier 15, and I observed the cases of eggs and the other merchandise there, I observed my initials which I had placed there the day before.

Q. How many eggs did you initial, the day before?

A. How many eggs did I initial the day before? At least one of these cases the day before at Pier 30, so I could identify that shipment later.

Q. You put your initials on one of the cases on pier 15; I mean you found your initials there?

A. Yes.

Q. Did you weigh any of these cases on Pier 15?

A. Yes. Major Evans and myself weighed 12 of these cases.

Q. Of these 12 cases how many bore the label with the purple "P" on them, and how many did not?

A. Nine bore the purple "P" and 3 did not.

Q. Do you have notations of the results of your weighing? A. Yes.

Q. Who did the weighing?

A. We did the weighing together.

Q. Who made the notes?

A. I made the notes.

(Testimony of Dallas A. Johnson.)

Q. Did you observe the reading of the scale weights and make your notes?

A. I wish to correct my previous statement. I think Major Evans put some notes, too, on the inspection sheet. [2783] However, I also made notes.

Q. Did you actually observe the reading on the scale for each of these cases? A. Yes.

Q. What did you find for the nine cases which bore the purple "P" regarding weights?

A. I found each of the cases had a net weight, that is, doubling the half case weight and subtracting 3½ pounds for flats and fillers, of 34 pounds, 36 pounds 4 ounces, 33 pounds 10 ounces, 32 pounds, 33 pounds 8 ounces, 34 pounds 4 ounces, 33 pounds 6 ounces, 32 pounds 12 ounces, and 33 pounds.

Q. Did you weigh any of the merchandise?

A. I weighed the three cases bearing U. S. Department of Agriculture stamps and they weighed 39 pounds 10 ounces, 39 pounds 12 ounces, 39 pounds 14 ounces.

Q. Did you weigh any cheese at that time?

A. Yes, I weighed some cheese which was on the invoice as California Loaf cheese. There were three boxes.

Q. And did you notice any markings on these boxes or the cheese, itself?

A. Yes; there was a marking on the cheese itself. The word "Mendocino" was printed across the loaf numerous times, and on the ends of the loaf was the legend, "Cheddar Factory 1621 Whole Milk."

(Testimony of Dallas A. Johnson.)

Q. Was there any marking on the loaf indicating the identity of the vendor or on the box?

A. On the box there was the name "Nye & Nissen, San Francisco, Factory 1621." I understand [2784] that is the number of the Nye & Nissen Creamery Factory, that is their cheese factory number.

Q. And did that appear on each of the three cases? A. Yes, it did.

Q. You say you weighed this cheese?

A. Yes, I weighed each cheese.

Q. Did you find that it weighed the amount billed for on the invoice?

Mr. Faulkner: We object to that as calling for an opinion of the witness. The invoice speaks for itself.

Mr. Houck: Q. Did you find that it weighed 84 pounds?

A. I found it weighed, the net weight was 77 pounds 7 ounces.

Q. Did you weigh any other cheese in this shipment?

A. Yes, I weighed the Romano Dolce cheese which was contained in an old egg crate.

Q. Were there any markings on the cheese or the egg crate?

A. I have a notation here that there were no markings on the crate. There were markings on the cheese, itself, I have the notation, "Whole Milk Romano Dolce type, Factory 1621." It was on each of the cheeses.

(Testimony of Dallas A. Johnson.)

Q. Did you find that that Romano Dolce cheese weighed 63 pounds, as billed on the invoice?

A. No. I found it weighed 53 pounds 14 ounces.

Mr. Houck: You may cross-examine. [2785]

Cross Examination

Mr. Faulkner: Q. Mr. Johnson, before you came into court here this afternoon did you refresh your recollection on any of the instances relating to the subject matter of investigating shipments from the firm of Nye & Nissen at the waterfront in the months of April and May, 1944?

A. Yes, sir, I did.

Q. How many shipments did you call on, how many ships did you call on during that period of time?

A. Oh, I see what you meant. The ships that I went to at the time of the investigation——

Q. No, no. In other words, I asked you if you had refreshed your recollection of what you did on the waterfront and you said yes. Now, I want to know how many ships you called on that you had refreshed your recollection on from your notes.

A. Well, the notes that I refreshed my recollection from were the notes that I have just mentioned here. I refreshed my recollection on, I think, nine ships. The other part of your question I don't recall.

Q. All right. I will ask the question again: How many ships did you call upon in the months of April and May, 1944, in relation to the firm of Nye & Nissen?